



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2019-0382; FRL-10000-18-Region 1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration; PM₁₀, PM_{2.5} and NO_x.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM_{2.5}”), PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), and nitrogen oxides (NO_x) within the context of Rhode Island’s Prevention of Significant Deterioration (PSD) permitting program. The EPA is also approving other minor changes to Rhode Island’s PSD permitting program. In addition, EPA is converting several conditionally approved infrastructure SIP elements to fully approved elements for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS). These actions are being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2019-0382. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1 Regional Office, 5 Post Office Square – Suite 100, mail code 05-2, Boston, MA 02109-3912, tel. (617) 918-1657, email: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On July 24, 2019 (84 FR 35582), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Rhode Island. The NPRM proposed approval of revisions to Rhode Island's PSD permit program regulations and also proposed to convert from conditional approval to full approval several infrastructure SIPs. The formal SIP revision was submitted to the EPA by the Rhode Island Department of Environmental Management (RI DEM) on March 26, 2018. On

February 6, 2019, RI DEM submitted to the EPA a letter clarifying its intent to only incorporate certain elements of its March 2018 submittal for inclusion into the Rhode Island SIP.

The State of Rhode Island's PSD permitting program is established in Title 250 – Rhode Island Department of Environmental Management, Chapter 120 – Air Resources, Subchapter 05 – Air Pollution Control, Part 9 – Air Pollution Control Permits (Part 9). Revisions to the PSD program were last approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383). Rhode Island has authority to issue and enforce PSD permits under its SIP-approved PSD program.

The March 2018 RI DEM SIP submittal, and February 2019 clarification letter, were submitted to address $PM_{2.5}$ and PM_{10} in the State's PSD permitting regulations, to specifically address NO_x as a precursor to ozone formation, and to make other minor changes to Rhode Island's PSD permitting program. This submittal also sought to satisfy the conditions of an April 20, 2016 conditional approval (81 FR 23175) for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIPs (I-SIPs). The conditions of the April 20, 2016 conditional approval related to the aspects of the PSD program pertaining to NO_x as a precursor to ozone formation and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of $PM_{2.5}$.

In the EPA's April 20, 2016 conditional approval, we cite a February 18, 2016 letter in which RI DEM commits to making the necessary changes to address the deficiencies in the Rhode Island SIP. RI DEM's March 2018 SIP submittal and February 2019 clarification letter satisfy the State's earlier commitment.

The NPRM includes the rationale for our full approval and the EPA will not restate its rationale in this action. No public comments were received on the NPRM.

II. Final Action

The EPA is approving several revisions to Rhode Island's PSD SIP and converting several previously conditionally approved I-SIPs to full approval.

Since the EPA's last approval on October 24, 2013 of amendments to RI DEM's Part 9, the State has undertaken a new codification system that results in different citations between the current state regulations and the Rhode Island SIP. Due to the State's new codification system, there are instances where the state regulation being approved into the SIP at this time does not mesh precisely within the existing codification structure of the Rhode Island SIP. As a matter of substantive legal requirements, however, the regulations approved into the Rhode Island SIP, including those we are approving today, are harmonious and clear.

We describe below exactly how each definition and provision within Part 9 that we are approving will be incorporated into Rhode Island's SIP. A discussion of how the amendments to the SIP align with existing provisions in EPA's PSD regulations at 40 CFR part 51.166 is contained in the NPRM and will not be repeated here. The EPA is approving the following specific revisions into the Rhode Island SIP.

1. The definition of "Baseline concentration" in Section 9.5.C.2., replaces Section 9.5.1(b) in the currently approved Rhode Island SIP.
2. The definition of "Increment" in Section 9.5.C.3., replaces Section 9.5.1(d) in the currently approved Rhode Island SIP.
3. The definition of "Major Source Baseline Date" in Section 9.5.C.4., replaces Section 9.5.1(e) in the currently approved Rhode Island SIP.
4. The definition of "Major Stationary Source" in Section 9.5.C.6., replaces Section 9.5.1(g) in the currently approved Rhode Island SIP.

5. The definition of “Minor Source Baseline Date” in Section 9.5.C.5., replaces Section 9.5.1(f) in the currently approved Rhode Island SIP.

6. The definition of “Regulated NSR Pollutant” in Section 9.5.A.36., replaces Section 9.1.36 in the currently approved Rhode Island SIP.

7. The definition “Subject to Regulation” in Section 9.5.A.41., replaces Section 9.1.41 in the currently approved Rhode Island SIP.

8. The regulation regarding the amount of available increment a source can consume in Section 9.9.2 replaces Section 9.5.3.(a) in the currently approved Rhode Island SIP.

Although the State’s amendment removes the limits on the amount of available increment that can be consumed, the amendment does not allow a source to consume more increment than is available. *See* Subchapter 05, Part 9, Section 9.9.1.A.2.a(2) of Rhode Island’s Air Resources Regulations.

9. Section 9.9.2.A.5.e(3), which prohibits emissions from temporary sources of sulfur dioxide, nitrogen oxides, and particulate matter from being excluded from increment consumption if the temporary emissions would impact a Class I area, replaces Section 9.5.3(c)(5)c in the currently approved Rhode Island SIP.

10. The table in Section 9.9.4.A. that contains PM_{2.5} thresholds which, if exceeded, would require a new major stationary source or a source making a major modification to comply with nonattainment new source review requirements, replaces the table at Section 5.5 in the currently approved Rhode Island SIP.

With these changes to Rhode Island’s PSD regulations, the EPA has found that Rhode Island’s infrastructure SIPs for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} NAAQS fully meet the PSD program requirements.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the RI DEM's regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;

¹ 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 19, 2019.

Dennis Deziel,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart OO - Rhode Island

2. Section 52.2070 is amended:

a. In the table in paragraph (c) by revising the entry for “Air Pollution Control Regulation 9”;
and

b. In the table in paragraph (e) by revising the entries for “Infrastructure SIP for the 2008 Ozone NAAQS”, “Infrastructure SIP for the 2008 lead NAAQS”, “Infrastructure SIP for the 2010 NO₂ NAAQS”, “Infrastructure SIP for the 1997 PM_{2.5} NAAQS”, and “Infrastructure SIP for the 2006 PM_{2.5} NAAQS”.

The revision reads as follow:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Rhode Island Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**

Air Pollution Control Part 9	Air pollution control permits	4/5/2018	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Amend definitions in Section 9.5: “Baseline concentration”; “Increment”; “Major Source Baseline Date”; “Major Stationary Source”; “Minor Source Baseline Date”; “Regulated NSR Pollutant”; “Subject to Regulation” . Replace Section 9.5.3.(a) with new language codified as Section 9.9.2. Replace Section 9.5.3(c)(5)c with new language codified as Section 9.9.2.A.5.e(3). Replace the table at Section 5.5 with a new table codified as Section 9.9.4.A.
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(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Infrastructure SIP for the 2008 ozone NAAQS.	Statewide	Submitted 01/02/2013 and 3/26/2018	4/20/2016, 81 FR 23178.	Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. [Insert date of publication in the Federal Register][Insert Federal Register citation] . Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.

Infrastructure SIP for the 2008 lead NAAQS.	Statewide	Submitted 10/26/2011 and 3/26/2018	4/20/2016, 81 FR 23178.	<p>Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. <u>[Insert date of publication in the Federal Register][Insert Federal Register citation].</u></p> <p>Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.</p>
Infrastructure SIP for the 2010 NO ₂ NAAQS.	Statewide	Submitted 1/2/2013 and 3/26/2018	4/20/2016, 81 FR 23178.	<p>Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. <u>[Insert date of publication in the Federal Register][Insert Federal Register citation].</u></p> <p>Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.</p>
Infrastructure SIP for the 1997 PM _{2.5} NAAQS.	Statewide	Submitted 9/10/2008 and 3/26/2018	4/20/2016, 81 FR 23178.	<p>Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. <u>[Insert date of publication in the Federal Register][Insert Federal Register citation].</u></p> <p>Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.</p>

Infrastructure SIP for the 2006 PM _{2.5} NAAQS.	Statewide	Submitted 11/6/2009 and 3/26/2018	4/20/2016, 81 FR 23178.	Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. [Insert date of publication in the Federal Register][Insert Federal Register citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
**	*	*	*	**

§ 52.2077 [Amended]

3. Section 52.2077 is amended by removing and reserving paragraph (a).
[FR Doc. 2019-20870 Filed: 10/1/2019 8:45 am; Publication Date: 10/2/2019]